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STATE FOR WHA/BSC MDRUCKER, BFRIEDMAN AND MDASCHBACH,
COMMERCE FOR DOC/ITA LMARKOWITZ

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TAGS: [ENRG](#) [PREL](#) [KGHG](#) [KSUM](#) [SENV](#) [PA](#)

SUBJECT: US COMPANY INVESTMENT DISPUTE WITH PARAGUAY

Classified By: DCM Michael J. Fitzpatrick; reasons 1.4 (b) and (d).

¶11. (C) SUMMARY: Texas-based Crescent Global Oil disputes with the Ministry of Public Works and Communications (MOPC) the starting date for an oil exploration contract. While ambiguities in the contract were clarified by MOPC Resolution 583 in Crescent's favor under President Duarte's administration, President Lugo's MOPC derogated Resolution 583 and issued May 19 Resolution 617 that terminates the concession in December 2009 (as opposed to May 2012). There are political, ideological, and special interests that Crescent believes influenced the MOPC change in position. After Crescent officially asked for Post's commercial and advocacy support May 19, the Embassy has been facilitating dialogue between the parties. However, if the dispute is not resolved, Crescent will sue the government of Paraguay (likely both here and in the U.S.) for the stated value of the probable oil reserves under dispute, possibly upwards of two billion dollars. The MOPC has the means to resolve this dispute but political will appears to be waning. If this lawsuit comes to fruition, it will send a strong public message about the downside to investing in Paraguay. END SUMMARY.

ABOUT THE DISPUTE - BACKGROUND

¶12. (SBU) Texas based companies Petro-Vitory and Crescent Global Oil (Crescent), through their wholly-owned Paraguayan subsidiaries Pirty SA and Crescent Global Oil - Paraguay, hold several oil exploration concessions in Paraguay. Pirty holds the southern Chaco concession (border with Argentina); Crescent has invested over USD 2 million prospecting the concession and is planning to invest up to USD 8.3 million in the first stage of its exploration.

¶13. (SBU) A concessionaire has four years for exploration under Paraguay's hydrocarbons law. In Crescent's case, there are two possible interpretations defining the start date for exploration: (a) the date the lot was selected and adjudicated by the MOPC (December 30, 2005) or (b) the date the law approving the exploration contract was approved by Congress (May 13, 2008). Under option (a) Crescent's rights to the concession end December 30, 2009, while under option (b) the rights terminate on May 13, 2013. Two weeks after Congress approved the exploration contract, Crescent paid the cannon fees (80,000 USD or 10 cents per hectare for 800,000 hectares) to the MOPC, securing the rights to explore and exploit its concession per the contractual terms. Because the contract approved by Congress was ambiguous, Crescent asked for, and the MOPC issued, Resolution 583 in May 2008, clarifying that the exploration rights began on May 13, 2008.

¶4. (C) Crescent moved from the prospecting to the exploration phase when Congress approved the exploration contract. Crescent submitted in November 2008 its four-year investment plan for exploration to the MOPC (including a Schlumberger report from its prospecting phase that shows probable reserves of 300 million barrels). Crescent's CEO Richard Gonzalez and several U.S. investors met in November 2008 with President Lugo and presented the company's investment plan. From January 2009 to April 2009, Crescent made several requests for exploration equipment permits to the MOPC.

5. (SBU) On May 19, 2009, the MOPC issued Resolution 617 which invalidated Resolution 583, and set Crescent's end date for exploration as December 30, 2009. The MOPC notified Crescent of Resolution 617's existence on May 19. (NOTE: Prior to the May 19 notification, Crescent did not receive any official communication from the MOPC regarding its requests for permits despite repeated attempts to get a response. END NOTE.) Crescent contacted the Embassy May 19, and formally asked for commercial assistance and investment advocacy support. The same day, Crescent submitted to the MOPC a motion to reconsider Resolution 617.

PERCEPTIONS OF UNFAIR AND BIASED DEALINGS

¶6. (C) There are political, ideological, and special interests that Crescent believes influenced the MOPC change in position. According to Crescent, MOPC Director of Hydrocarbons Emilio Boungermini is the technocrat mastermind behind Resolution 617. Crescent CEO Gonzalez argues that Boungermini is working a political/ideological agenda directed by Ausberto Rodriguez to revoke Crescent's concession in Alto Parana and give it to Lan Oil, a company from the Ecuadorian group Tripetrol. (NOTE: Ausberto Rodriguez was proposed and then withdrawn as a candidate for Paraguay's embassy in Uruguay. He is a close friend of former Foreign Minister Hamed Franco, and the father of Education Vice-Minister Karina Rodriguez, a leading member of the socialist party P-MAS. END NOTE.) Gonzalez feels targeted by Boungermini's political agenda, and does not see the MOPC as a viable partner.

¶7. (C) According to Crescent, Rodriguez organized two meetings with Lan Oil representatives and President Lugo. Lugo first met September 3, 2008 with Edgar Gonzalez and Ausberto Rodriguez, representing Lan Oil, to discuss and analyze the possibility of oil exploration in Paraguay. The second meeting was February 2009, when Paraguay's Controller Enrique Garcia, Boungermini, and Lan Oil's Edgar Gonzalez and Ausberto Rodriguez met with Lugo to supposedly discuss the legal and administrative processes for the concession in Alto Parana.

¶8. (C) In a lunch Crescent CEO Gonzalez had in April 2009 with Boungermini, Boungermini told Gonzalez that Crescent should get out of Alto Parana or "face the consequences", asserting that the government wanted Lan Oil to have the Alto Parana concession. Gonzalez is convinced that Boungermini promulgated Resolution 617 as retaliation for Crescent's failure to give up the Alto Parana concession. Gonzalez argues that Crescent has the greatest potential to find oil in Paraguay and this has increased the motivation of special interest groups to get Crescent out.

ABOUT OUR ADVOCACY

¶9. (C) Ambassador Ayalde called MOPC Minister Alegre May 19 to share our concerns about the apparent lack of objectivity and due process in Crescent's case. Following the call, Crescent representatives and Econoff met May 20 with Minister Alegre and his team. In the meeting, Director of Legal Affairs Baez Infante and Director Boungermini defended Resolution 617, arguing that Resolution 583 was unconstitutional because it modified a law, and the

performance period started the date the lot was adjudicated. Crescent, in turn, argued that Resolution 583 clarified the performance period. (NOTE: The MOPC has the authority to issue resolutions to clarify contractual terms. END NOTE.) Minister Alegre repeatedly mentioned that the MOPC wants to help and promote private investment, not create obstacles. Gonzalez repeated to the Minister what Boungermini had said about Lan Oil, including what he threatened would happen if Crescent did not abandon the Alto Parana concession. The Minister reacted with surprise, and said the MOPC would take an objective look at Crescent's motion to reconsider.

¶10. (C) As agreed, Minister Alegre and the same MOPC team met again May 22 with Crescent and Econoff to go over Crescent's motion to reconsider. The MOPC team, however, admitted they had not read Crescent's motion, and continued to argue in favor of Resolution 617. Minister Alegre again emphasized his interest in resolving the dispute, and suggested that the matter could be resolved with a Congressional modification of the exploration contract -- Alegre said he would personally take the issue to Congress to ensure its speedy approval. Crescent argued that a congressional option is not realistic, considering that it took over three years for Congress to approve the exploration contract. The MOPC team agreed to meet with Crescent lawyers to discuss the motion to reconsider.

¶11. (C) At the Ambassador's request, Minister Alegre met with Ambassador Ayalde on Saturday May 23 about the serious implications of Crescent's investment dispute, and tried to determine how involved he was in the case. During a very frank two-hour meeting Minister Alegre confessed he did not realize the negative impact the resolution would have when he signed it. He was visibly concerned with the implications this would have not only on this operation but on Paraguay's international image. He admitted he had delegated this part of his portfolio to Director of Hydrocarbons Boungermini. Alegre said he inherited a cesspool of corruption regarding public works contracts and had focused his attention on this, as well as the political demands of being an active member of the Liberal Party supporting the government alliance. He relied heavily on Boungermini and had been convinced that Resolution 617 was needed to better align the process for the future. He offered Crescent a different interlocutor (new MOPC Vice Minister of Energy German Domingo); asked to meet with Crescent himself to hear from them directly as to the reasons they thought there was a political agenda behind all this; and offered a meeting between the Embassy and the Ministry's lawyers to walk through their reasons behind the issuance of Resolution 617. He was clear that he wanted to find a solution to the impasse.

¶12. (C) Crescent's lawyers tried to meet with MOPC Director of Legal Affairs Infante May 25 to go over the motion to reconsider. Infante, however, was "busy" and instead they met Ruben Ocampos, Minister Alegre's closest personal advisor. As reported by Crescent, the meeting was a productive review of the motion to reconsider. Minister Alegre stopped-by while they were meeting, and Ocampos suggested that Minister Alegre send the case to an external law firm for a legal opinion. Minister Alegre concurred. (NOTE: From this point forward, Ocampos has been the main MOPC interlocutor for Crescent's case. END NOTE.) Econoff met twice with Ocampos (May 26 and May 28) and once with Infante and Boungermini (May 25) to stress the importance of being objective in evaluating Crescent's motion to reconsider. Econoff also met June 1 and June 8 with Ocampos to encourage dialogue with the company, and to follow up on Crescent's meeting with Minister Alegre, per Minister Alegre's conversation with Ambassador Ayalde.

¶13. (C) Ambassador Ayalde also underscored Crescent's concerns in a June 8 meeting with Finance Minister Borda in the larger context of U.S. investments in Paraguay. Along with ongoing regulatory difficulties impacting Cargill's investments (septel), the Ambassador discussed the Crescent case in detail. Minister Borda expressed his unconditional support for objectivity and fair dealing, arguing that Paraguay needs to attract investment to grow and can not

afford to lose credibility. Borda expressed his frustration with middle ranks in the civil service that for political or ideological reasons can initiate bureaucratic actions that become virtually unstoppable by the time they reach a Minister for action. (NOTE: Post is becoming increasingly aware of this kind of bureaucratic "mafia" working to undermine leadership in various ministries. END NOTE.) Borda quickly internalized the domestic and international implications of a Crescent law suit, and said he would talk to Minister Alegre. On June 10, Ambassador Ayalde called Alegre to thank him in advance for seeing Crescent CEO Gonzalez and alerted him to the conversation with Minister Borda. Alegre confirmed the meeting with Crescent and indicated that he works well with Borda as part of a team on a common agenda.

¶14. (C) Minister Alegre agreed to meet with Crescent CEO Gonzalez June 12. Although the meeting was confirmed, Minister Alegre did not show up, and delegated the meeting to Ocampos. (NOTE: During the meeting, Minister Alegre quickly walked by but did not even greet the participants. He was caught and seemed surprised and embarrassed as he quickly walked away. END NOTE.) Ocampos reaffirmed the MOPC's interest in promoting investment and reaching a solution. He said the MOPC is now waiting for input from its external legal advisor, and agreed to a technical meeting between the parties before issuing an official response to Crescent's motion to reconsider. Gonzalez detailed the perception issues, arguing that the company has significant financial interests tied to the concession, and asking the MOPC for collaboration as a partner.

WORKING PERMITS - A POSSIBLE SIGNAL

¶15. (C) Crescent has close to USD one million in equipment waiting in Paraguay's customs pending permits from the MOPC. Crescent first requested the permits in January; it asked for the permits a third time June 9. Econoff met with Ocampos June 17 to follow up on Crescent's permit requests. Ocampos received a copy of the permit applications and said that he will personally see to it, mentioning that he had no knowledge of the requests.

¶16. (C) Crescent CEO Gonzalez argues that MOPC delays in approving the permits is consistent with the perception of unfair dealings, and stated that a positive signal from the MOPC would be to approve the permits expeditiously to avoid further losses. Gonzalez, however, remains skeptical about MOPC's willingness to work as a partner, and will wait and see how the MOPC responds. (NOTE: Post concurs with Gonzalez about the signals the MOPC sends by issuing the permits -- a simple process authorized under the current contract regardless of which end date one believes to be valid. The manner in which the MOPC resolves the permits issue will provide clues about the MOPC's intention to work as a partner with Crescent. END NOTE.)

¶17. COMMENT: If the dispute is not resolved in the near future, Crescent says it will take legal action against the government of Paraguay (likely both in Paraguay and the U.S.) in what could be a two billion dollar plus lawsuit (NOTE: Punitive damages alone could reach USD 2.2 billion; 300 million oil barrels in probable reserves times the current price per barrel of around USD 70. END NOTE.) Crescent maintains that legal action is its last recourse, but is ready, if necessary, to move forward with litigation and public relations campaign to press its case. Although the MOPC maintains that wants to work with Crescent, its record tells a different story. For the time being, Crescent will wait for two signals: (a) the meeting with the MOPC before the MOPC issues its official response to Crescent's motion to reconsider, and (b) MOPC's actions regarding the equipment permits. The MOPC has the capacity to resolve this dispute, but it appears that political will is waning. If this lawsuit comes to fruition, it will send a strong public message about the downside to investing in Paraguay. END COMMENT.

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AYALDE